

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FLOWERS BAKERIES
BRANDS, INC.,

Opposer,

v.

INDEPENDENT MARKETING
ALLIANCE LP,

Applicant.

In the Matter of Application
Serial No. 78/432642
Mark: COBBLESTONE MARKET

Opposition No. _____



NOTICE OF OPPOSITION

Opposer, Flowers Bakeries Brands, Inc. ("Flowers"), a Delaware corporation located at 11 North Market Street, Suite 1300, Wilmington, Delaware 19899, will be damaged by registration of Applicant's COBBLESTONE MARKET mark (Serial No. 78/432642) and opposes the same pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101 and 2.104(a). The grounds for opposition are as follows:

1. Applicant Independent Marketing Alliance LP ("Applicant") filed an intent-to-use application to register the mark COBBLESTONE MARKET for "deli meats; cooked deli items, namely, soups, and vegetables; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely entrees consisting primarily of meat, fish, poultry or vegetables" in International Class 29, and "deli mustard; cooked deli items, namely sandwiches" in International Class 30. Applicant's trademark application was published for opposition in the *Official Gazette* on September 20, 2005.



2. Since at least as early as August 19, 1983, Flowers, its predecessors, and its licensees have used the mark COBBLESTONE MILL in connection with food products, namely bakery products. Since that time, the COBBLESTONE MILL mark has served as an inherently distinctive indicator of food products, namely bakery products, produced and sold under Flowers' authority. Flowers is the owner of the following federal registrations:

Mark	Goods	Registration Date
COBBLESTONE MILL	Bakery products, namely bread, buns and rolls.	August 6, 1996
	Bakery products-namely, bread, buns and rolls.	March 19, 1985
	Bakery products.	September 9, 2003

3. Over the last several decades, Flowers has expended considerable sums of money into developing consumer brand recognition for the COBBLESTONE MILL marks.

4. As a result of widespread advertising and promotion by Flowers and its licensees, Flowers' COBBLESTONE MILL marks have acquired a high degree of recognition, fame, and distinctiveness as a symbol of the high quality food products, namely bakery products, offered by Flowers and its licensees prior to the filing date of Applicant's application. The public and retail buyers are familiar with and identify

Flowers' marks with Flowers, and, by reason of this identification, goods associated with the marks are understood by the public and trade to be produced, marketed, and supplied under Flowers' authority or otherwise derived from Flowers.

5. Flowers' COBBLESTONE MILL marks are an important factor employed by the public in identifying the source of Flowers' and its licensees' products and are distinctive of those products.

6. Flowers' COBBLESTONE MILL marks also are used on bakery products that are sold in grocery stores in the United States, including in Texas, Louisiana, Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, Tennessee, Virginia, New Mexico, Missouri, Ohio, Oklahoma, South Carolina, Kentucky, West Virginia, Maryland, and Washington D.C.

7. As a result of these and other uses, the COBBLESTONE MILL marks are entitled to a broad scope of protection.

8. On or about June 9, 2004, Applicant filed an application to register the mark COBBLESTONE MARKET on the Principal Register. This application was assigned Serial No. 78/432,642. On information and belief, Applicant plans to sell its food products, including sandwiches, in at least some of the same states where Flowers' food products, namely bakery products, also are sold.

9. The marks at issue both incorporate the identical term COBBLESTONE followed by one word that begins with the letter M. The marks therefore are similar with respect to appearance, pronunciation, and commercial impression. On information and belief, like Flowers' family of COBBLESTONE MILL marks, Ap-

plicant's proposed mark would be used in connection with food products including sandwiches regularly consumed by the public.

10. The relevant public is likely to be confused into believing that Applicant's food products, including sandwiches, as offered under the mark COBBLESTONE MARKET, emanate from Flowers, or are authorized, licensed, endorsed, or sponsored by Flowers. Registration of Applicant's mark on the Principal Register thus would be inconsistent with Flowers' prior rights in its family of well-known COBBLESTONE MILL marks.

11. Flowers will be damaged by registration of Applicant's mark COBBLESTONE MARKET because it so resembles Flowers' previously used, federally registered, and well-known COBBLESTONE MILL marks as to be likely, when used on or in connection with the food products including sandwiches identified in application Serial No. 78/342,642, to cause confusion, or to cause mistake, or to deceive in violation of Section 2 of the Lanham Act, 15 U.S.C. § 1052.

12. Flowers will be damaged by registration of Applicant's mark COBBLESTONE MARKET because the subject mark dilutes and is likely to dilute the distinctiveness of Flowers' famous COBBLESTONE MILL marks by eroding consumers' exclusive identification of these marks with Flowers, and/or by tarnishing and degrading the positive associations and prestigious connotations of the famous COBBLESTONE MILL marks, and/or by otherwise lessening the capacity of Flowers' COBBLESTONE MILL marks to identify and distinguish the goods of Flowers and its licensees.

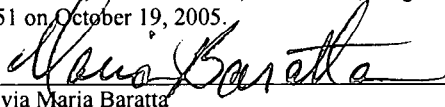
13. Form PTO-2038 is enclosed herewith authorizing the charge of \$600.00 to cover the filing fee for this Notice of Opposition. The Commissioner is authorized to debit the account of Kilpatrick Stockton LLP (Deposit Account No. 11-0860) for any deficiency in the required fee.

WHEREFORE, Flowers requests that registration of the mark that is the subject of application Serial No. 78/432,642 be refused, and this Notice of Opposition be sustained in favor of Flowers.

This 19th day of October, 2005.

CERTIFICATE OF MAILING

I certify that this paper is being deposited with the United States Postal Service as Express Mail Label EL 60299755 US in an envelope addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on October 19, 2005.


Olivia Maria Baratta

Respectfully submitted,


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